

## Memorandum 2021-14

**2021 Legislative Program (Status Report)**

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The attached table shows the status of Commission-related legislation in 2021.<sup>1</sup> Additional information is provided below.

**Trial Court Restructuring**

Additional information about Assembly Bill 414 (Maienschein) is provided in the Second Supplement to this memorandum

**California Public Records Act**

Additional information about Assembly Bills 473 and 474 (Chau) is provided in the First Supplement to this memorandum.

**Eminent Domain: Pre-Condemnation Activity**

The Commission's recommendation on *Eminent Domain: Pre-Condemnation Activities* (Sept. 2020) has been included in the Assembly Committee on Judiciary's "civil omnibus" bill (AB 1578 (Judiciary)).

**Revocable Transfer on Death Deed: Follow-Up Study**

Senate Bill 315 (Roth) would implement the Commission's recommendation on *Revocable Transfer on Death Deed: Follow-Up Study*, 46 Cal. L. Revision Comm'n Reports 135 (2019).

That bill was amended on March 15, 2021, to make two technical changes:

First, the bill was amended to conform to a Commission decision at the February meeting, in connection with the ongoing study of a nonprobate transfer of property in a stock cooperative. Specifically, the bill would now amend Probate Code Section 5660 as follows:

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1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

5660. If a revocable transfer on death deed recorded on or before 60 days after the date it was executed and another instrument both purport to dispose of the same property:

(a) If the other instrument is not recorded ~~before the transferor's death~~, within 120 days after the affidavit required by subdivision (c) of Section 5682 is recorded, the revocable transfer on death deed is the operative instrument.

(b) If the other instrument is recorded ~~before the transferor's death~~ within 120 days after the affidavit required by subdivision (c) of Section 5682 is recorded and makes a revocable disposition of the property, the later executed of the revocable transfer on death deed or the other instrument is the operative instrument.

(c) If the other instrument is recorded ~~before the transferor's death~~ within 120 days after the affidavit required by subdivision (c) of Section 5682 is recorded and makes an irrevocable disposition of the property, the other instrument and not the revocable transfer on death deed is the operative instrument.

The staff recommends that the Commission approve a Comment for that provision along these lines:

**Comment.** Section 5660 is amended to parallel the 120-day post-death period for recording relevant instruments in Sections 5652 (competing instrument) and 5694 (lis pendens).

Second, the bill was amended to add a provision requested by legislative staff, to make clear that the RTODD statute does not limit the application of existing penalties (both criminal and civil) for financial fraud. Thus:

5698. Nothing in this chapter limits the application of other law that imposes a penalty or provides a remedy for the creation of a revocable transfer on death deed by means of fraud, undue influence, menace, or duress, including, but not limited to, Section 368 of the Penal Code and Sections 15656 and 15657.5 of the Welfare and Institutions Code.

The staff believes that provision is declarative of existing law and therefore nonsubstantive. Because this was not based on the Commission's recommendation, there is no need to add a Commission Comment to the provision.

Discussions about the bill continue and an expected March 23 hearing date was postponed to April 6. The only issue under discussion that the staff is free to

mention has to do with the proposed new requirement that a beneficiary of an RTODD give notice to the deceased transferor's heirs, as a precondition to the transfer of title to the beneficiary. That provision was modeled after an existing provision of the trust law, Probate Code Section 16061.7.

The proposed law includes a limitation on the liability of a beneficiary for a defect in giving notice. Proposed Section 5681(g)(1) provides:

A beneficiary is liable to an heir of the transferor for any damage caused by a failure to comply with this section that is intentional or grossly negligent.

There is no equivalent limitation in the trust provision.

That provision drew attention, because of its deviation from the ordinary standard of reasonableness that applies to most duties. The staff will discuss the implications of that attention at the upcoming meeting.

### **Common Interest Development Meetings During Emergencies**

Senate Bill 391 (Min) would implement the Commission's recommendation on *Emergency-Related Reforms: Common Interest Development Meetings* (Nov. 2020).

The bill was opposed in the Legislature by the California Center for Homeowner Association Law (CCHAL). (Marjorie Murray, who attended the Commission's meetings on this topic, is the president of that group.) CCHAL's position was later adopted by the California Association of Retired Americans and Habitat for Humanity.

The opposition is based on four main points. All of those points, and possible responses to them, were discussed with the Committee's Chair before the hearing in the Senate Housing Committee on March 18, 2021.

**Meeting notice.** This issue was addressed in the Senate Housing Committee, by the author's assent to a Committee amendment. The amendment is not yet in print, but the staff's understanding is that it would change the rules on giving notice of a meeting conducted under the emergency procedure, by adding the following requirements:

- (1) Notice of the first meeting that is conducted under the proposed law for a particular emergency must be delivered to members by individual delivery. The subsequent notices for meetings held during that emergency could be sent by general delivery.

- (2) All notices for meetings conducted under the proposed law must remind members of their right to opt in to receive meeting notices by individual delivery.
- (3) If the association has reason to believe the emergency will prevent any member from receiving a notice at the address in the association's records, the association would need to take all reasonable steps to provide each of those members with notice of the meeting through alternative means.

**Ballot Inspection.** The opposition believes that ballot counting should only occur at an in-person meeting. The proposed law would permit ballot counting by teleconference, without an in-person location.

**Enforcement.** Because the new provision would not be located within the existing article on board meetings, it would not be governed by Civil Code Section 4955, which authorizes members to sue to enforce the existing board meeting laws. The opposition wants Section 4955 to apply to the proposed law.

**Recording.** The opposition wants the proposed law to require that teleconference meetings conducted during emergencies be recorded and that those recordings be made available for member inspection.

The staff will discuss these ideas further at the meeting. However, a certain degree of circumspection may be warranted. Ultimately, it is the author's decision on whether to amend the bill and the staff does not wish to constrain him by staking out positions in public.

Respectfully submitted,

Brian Hebert  
Executive Director

# Status of 2021 Commission Legislative Program

As of March 19, 2021

		AB 414	AB 473	AB 474	AB 1578	ACR 24		SB 315	SB 391		
<b>Introduced</b>		2/3/21	2/8/21	2/8/2021	3/8/21	2/8/21		2/4/21	2/11/21		
<b>Last Amended</b>								3/15/21	3/18/21		
<b>First House</b>	Policy Committee		<i>3/23/21</i>	<i>3/23/21</i>		<i>3/23/21</i>		<i>4/6/21</i>	3/18/21		
	Second Committee										
	Passed House										
<b>Second House</b>	Policy Committee										
	Second Committee										
	Passed House										
<b>Concurrence</b>											
<b>Governor</b>	Received										
	Approved										
<b>Secretary of State</b>	Date										
	Chapter #										

**Bill List:** AB 414 (Maienschein): TCR omnibus  
 AB 473 (Chau): CRPA  
 AB 474 (Chau): CPRA Conforming Revisions  
 AB 1578 (Judiciary): Eminent Domain: Precondemnation Activity  
 ACR 24 (Chau): Resolution of Authority

SB 315 (Roth): RTODD follow-up  
 SB 391 (Min) CID Teleconferencing

**KEY** \_\_\_\_\_

*Italics:* Future or speculative  
 “—”: Not applicable